

1                   UNITED STATES DISTRICT COURT  
2                   EASTERN DISTRICT OF NORTH CAROLINA  
3                   WESTERN DIVISION

4                   UNITED STATES OF AMERICA,         )  
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9                   PETITIONER,                            )  
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  ) CASE NO. 5:08-HC-2095-BO

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JOSEPH AARON EDWARDS,                                    )  
  )  
  )  
RESPONDENT.    )

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  ) STATUS CONFERENCE

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  ) JANUARY 7, 2011

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  ) HONORABLE TERRENCE W. BOYLE, PRESIDING

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APPEARANCES:

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MR. R. A. RENFER, JR.  
ASSISTANT UNITED STATES ATTORNEY  
310 NEW BERN AVENUE  
RALEIGH, NC 27601  
(FOR THE GOVERNMENT)

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MR. EDWARD D. GRAY  
ASSISTANT UNITED STATES ATTORNEY  
310 NEW BERN AVENUE  
RALEIGH, NC 27601  
(FOR THE GOVERNMENT)

25

1 APPEARANCES: (CONT.)

2 MR. ERIC BRIGNAC  
3 ASSISTANT FEDERAL PUBLIC DEFENDER  
4 150 FAYETTEVILLE STREET  
5 SUITE 450  
6 RALEIGH, NC 27601  
7 (FOR THE RESPONDENT)

8 MR. JOSEPH ROSS  
9 ASSISTANT FEDERAL PUBLIC DEFENDER  
10 150 FAYETTEVILLE STREET  
11 SUITE 450  
12 RALEIGH, NC 27601  
13 (FOR THE RESPONDENT)

14 MR. KAY LEWIS  
15 APACHE INTERPRETER

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SHARON K. KROEGER, COURT REPORTER  
MACHINE SHORTHAND REPORTER, COMPUTER AIDED TRANSCRIPTION

1                   THE COURT: PLEASE BRING EDWARDS IN.

2                   GOOD MORNING, MR. RENFER AND MR. GRAY. ARE  
3 YOU MR. BRIGNAC?

4                   MR. BRIGNAC: YES, SIR.

5                   THE COURT: YOU ARE WITH THE PUBLIC DEFENDER?

6                   MR. BRIGNAC: YES, SIR.

7                   THE COURT: OKAY. MR. BRIGNAC AND MR. ROSS,  
8 YOU ARE HERE TO REPRESENT THE DEFENDANT?

9                   MR. ROSS: YES, YOUR HONOR.

10                  THE COURT: DOES HE SPEAK ENGLISH?

11                  MR. ROSS: HE DOES.

12                  MR. BRIGNAC: YES, SIR.

13                  THE COURT: ALL RIGHT. MR. EDWARDS HAS BEEN  
14 DETAINED SINCE JULY 1, 2008.

15                  DID YOU SWEAR THE INTERPRETER?

16                  THE CLERK: NO, I HAVE NOT.

17                  THE COURT: ALL RIGHT.

18                  (WHEREUPON, MR. KAY LEWIS WAS SWORN AS THE  
19 INTERPRETER.)

20                  THE COURT: DOES THE CLIENT NOT SPEAK ENGLISH?

21                  MR. ROSS: HE SPEAKS ENGLISH, BUT HE PREFERENCES  
22 TO HAVE AN APACHE INTERPRETER.

23                  THE COURT: DO YOU GET TO DO THAT?

24                  MR. ROSS: ALL I KNOW IS THAT IN HIS ORIGINAL  
25 CRIMINAL TRIAL, HE HAD AN APACHE INTERPRETER.

1                   THE COURT: OKAY. I MEAN, IF YOU SPOKE  
2 FRENCH, WOULD YOU -- AND YOU WERE AN AMERICAN AND SPOKE  
3 ENGLISH, WOULD YOU GET TO HAVE A FRENCH INTERPRETER  
4 BECAUSE WOULD YOU PREFER THAT?

5                   MR. ROSS: I DO NOT KNOW.

6                   THE COURT: OKAY. IT SEEMS TO ME THE ANSWER  
7 IS NO. BUT, AN INTERPRETER IS PROVIDED FOR THE ESSENTIAL  
8 NEED OF THE CLIENT, NOT FOR THE DISCRETIONARY NEED OF THE  
9 CLIENT. BUT ANYWAY.

10                  SO IF WE HAVE THE NEXT PROCEEDING IN THIS  
11 CASE, I WANT TO REVIEW, AND THE BURDEN IS ON YOU. THERE  
12 WON'T BE AN INTERPRETER UNLESS YOU ARE ABLE TO  
13 DEMONSTRATE THAT YOU ARE ENTITLED TO AN INTERPRETER.

14                  NO REACTION?

15                  MR. ROSS: YES, YOUR HONOR.

16                  THE COURT: OKAY. THERE YOU GO.

17                  AND SO HE WAS CERTIFIED ON JULY 8 AFTER HE  
18 APPROACHED THE TERMINATION OF HIS SENTENCE WHICH WAS AN  
19 84 MONTHS SENTENCE FOR BEATING AND RAPING A MINOR.

20                  MR. ROSS: YES, YOUR HONOR. HE WAS 17 AT THE  
21 TIME.

22                  THE COURT: HE WAS SENTENCED AS AN ADULT OR AS  
23 A JUVENILE?

24                  MR. ROSS: AS AN ADULT.

25                  THE COURT: AND THIS WAS ON THE TERRITORIAL

1 JURISDICTION OF THE UNITED STATES BECAUSE IT WAS ON A  
2 RESERVATION?

3 MR. ROSS: YES, YOUR HONOR.

4 THE COURT: AND DOES HE HAVE ANY OTHER SEXUAL  
5 PREDATORY PAST CONVICTIONS?

6 MR. BRIGNAC: HE WAS ADJUDICATED DELINQUENT  
7 HERE, YOUR HONOR, AND THAT WAS ALSO ON THE RESERVATION  
8 FOR AGGRAVATED ASSAULT, AND THAT DID APPEAR TO BE SEXUAL  
9 IN NATURE.

10 THE COURT: SEPARATE AND APART FROM THE CRIME  
11 THAT HE WAS SENTENCED ON?

12 MR. BRIGNAC: YES.

13 THE COURT: OKAY. AND HE WAS HOUSED SOMEWHERE  
14 OTHER THAN BUTNER PRIOR TO JULY 1?

15 MR. ROSS: YES, YOUR HONOR. HE WAS HOUSED AT  
16 FCI-PHOENIX FROM 3/02 TO 12/01, FCI-ATWATER FROM 12/02 TO  
17 FROM 2007, AND THEN HE MADE HIS TRIP OVER TO BUTNER  
18 WITHIN A COUPLE OF MONTHS AND ARRIVED THERE, I BELIEVE,  
19 10 OF '07.

20 THE COURT: OCTOBER OF '07?

21 MR. ROSS: YES, YOUR HONOR.

22 THE COURT: SO HE WAS A REGULAR SENTENCED  
23 INMATE IN BUTNER BEFORE HE WAS CERTIFIED THERE?

24 MR. ROSS: YES, YOUR HONOR.

25 THE COURT: WAS HE THERE AS A REGULAR

1 SENTENCED INMATE BECAUSE HE WAS INVOLVED IN THE SEXUAL  
2 TREATMENT PROGRAM?

3 MR. ROSS: NO, YOUR HONOR.

4 THE COURT: HE WAS JUST THERE BECAUSE THAT WAS  
5 HIS SECURITY GRADE AND THAT WAS WHERE THEY HOUSED HIM?

6 MR. ROSS: I BELIEVE BECAUSE THE GOVERNMENT  
7 WAS GETTING READY TO CERTIFY FOLKS AND THAT WAS THE  
8 REASON HE WAS BROUGHT THERE.

9 THE COURT: SO HE WAS IN THE PROCESS OF BEING  
10 SCREENED, AS FAR AS YOU BELIEVE?

11 MR. ROSS: YES, YOUR HONOR.

12 THE COURT: IN ANTICIPATION OF A DECISION, HE  
13 CAME TO BUTNER?

14 MR. ROSS: YES.

15 THE COURT: DO YOU KNOW IF THAT HAPPENS WITH  
16 RESPECT TO SOME OTHER DETAINEES WHO ARE ADVANCED TO  
17 BUTNER AND THEN NOT CERTIFIED?

18 MR. ROSS: THAT I DO NOT KNOW.

19 THE COURT: AND HE HAS A MOTION TO TRANSFER  
20 VENUE, AND ALSO A MOTION TO HAVE A HEARING UNDER 4248?

21 MR. ROSS: YES, YOUR HONOR.

22 THE COURT: SO THE VENUE MATTER IS A  
23 PROCEDURAL MATTER THAT ISN'T DISPOSITIVE, BUT THE HEARING  
24 COULD BE, AND HE IS IN THE PROCESS OF GOING FORWARD  
25 TOWARDS A HEARING NOW?

1 MR. ROSS: I WILL LET MR. BRIGNAC SPEAK TO  
2 THAT.

3 MR. BRIGNAC: ACTUALLY, MR. EDWARDS  
4 COMMUNICATED TO US WHEN WE SAW HIM THIS WEEK THAT HIS  
5 MAIN PRIORITY IS TO GET A HEARING AS QUICKLY AS POSSIBLE,  
6 AND IF THAT MEANT WITHDRAWING HIS VENUE MOTION AND MOTION  
7 TO DISMISS, HE WOULD BE WILLING TO DO THAT. THAT IS  
8 PRACTICALLY WHAT HE WANTS IS A HEARING AS QUICKLY AS  
9 POSSIBLE.

10 THE COURT: AND WHERE ARE YOU IN THE HEARING  
11 TRAJECTORY?

12 MR. BRIGNAC: JUDGE, WE HAVE DISCOVERY FROM  
13 THE GOVERNMENT, ALTHOUGH BECAUSE WE BELIEVE THAT THIS  
14 CASE WOULD BE DISMISSED, WE WOULD NEED AN EXTENSION TO  
15 RESPOND TO THE GOVERNMENT'S DISCOVERY BECAUSE, IN ALL  
16 HONESTY, WE HAVE BEEN -- UNTIL THIS WEEK, WORKING ON THE  
17 ASSUMPTION WITH MR. EDWARDS THAT THE CASE WOULD BE  
18 ULTIMATELY DISMISSED ON THE BRONCHEAU GROUNDS WHICH WE  
19 FILED IN THIS COURT. SO CERTAINLY IF THIS COURT WANTS,  
20 WE WILL START WORKING THIS AFTERNOON ON GETTING THE  
21 HEARING PROCESS MOVING FROM OUR END, BUT THAT IS WHERE WE  
22 ARE.

23 THE COURT: WELL, WHAT DO YOU THINK THE TIMING  
24 IS, ASSUMING THAT BRONCHEAU GETS REVERSED. WHAT IS THE  
25 TIMING ON GETTING TO A HEARING; THIS SUMMER?

1                   MR. BRIGNAC: YOUR HONOR, I THINK THAT MIGHT  
2 BE THE EARLIEST POSSIBLE TIME JUST BECAUSE AS YOU KNOW  
3 THERE WOULD BE MATTERS ABOUT EXPERTS, POSSIBLE DAUBERT  
4 HEARINGS, THERE IS A LOT ABOUT THIS LITIGATION IN THIS  
5 DISTRICT THAT WOULD HAVE TO BE RESOLVED POSSIBLY IN A  
6 PRETRIAL WAY BEFORE HEARINGS BEGAN.

7                   SUMMER IS CERTAINLY POSSIBLE THOUGH.

8                   THE COURT: DOES HE HAVE A TERM OF SUPERVISED  
9 RELEASE?

10                  MR. BRIGNAC: FIVE YEARS, YOUR HONOR.

11                  THE COURT: WHAT WAS THE CRIME? WAS IT AN  
12 ASSIMILATED CRIME THAT HE WAS CONVICTED OF?

13                  MR. BRIGNAC: IT, ACCORDING TO THE  
14 CERTIFICATE, IT LOOKS LIKE IT WAS ACTUALLY JUST A TITLE  
15 18 CRIME, SECTION 1153, SECTION 2244.

16                  THE COURT: AND I MEAN IS THAT ASSAULT OR IS  
17 IT RAPE OR WHAT?

18                  MR. BRIGNAC: AGGRAVATED SEXUAL ABUSE.

19                  THE COURT: AND THAT IS -- IT'S A TITLE 18  
20 CRIME BECAUSE IT'S ON THE TERRITORY OF THE UNITED STATES?

21                  MR. BRIGNAC: RIGHT. YES, SIR.

22                  THE COURT: DO YOU WANT TO BRING FORWARD  
23 ANYTHING TODAY WITH REGARD TO HIS CASE?

24                  MR. BRIGNAC: YOU KNOW, OTHER THAN THE NEW  
25 INFORMATION THAT HE WOULD BE WILLING TO WITHDRAW HIS

1 MOTIONS FOR THE SAKE OF AN EXPEDITED HEARING, NO.  
2 THAT'S ALL WE WOULD HAVE IN ADDITION TO WHAT WE HAVE  
3 FILED.

4 THE COURT: IS THE INTERPRETER INTERPRETING?

5 THE INTERPRETER: YAH.

6 THE COURT: HE IS?

7 MR. BRIGNAC: THE CLIENT WOULD LIKE TO PRESENT  
8 THIS.

9 THE COURT: HAVE THEY SEEN IT?

10 MR. RENFER: NO.

11 MR. BRIGNAC: WOULD YOU LIKE TO SEE THIS, YOUR  
12 HONOR? I CAN SUMMARIZE FOR YOU.

13 MR. RENFER: WE DON'T HAVE ANY OBJECTION, YOUR  
14 HONOR, ALTHOUGH SOME OF THE INFORMATION IS NOT CORRECT.

15 HE SAID DISCOVERY HAS NOT BEEN PRODUCED AND WE DID TIMELY  
16 PROVIDE ALL OF THE DISCOVERY THAT HAS BEEN REQUIRED UNDER  
17 THE STANDING ORDER ON TIME.

18 THE COURT: OKAY.

19 MR. BRIGNAC: YES.

20 THE COURT: WHAT IS HIS ISSUE?

21 MR. BRIGNAC: YOUR HONOR, HE SAYS HE WISHES TO  
22 PROCEED WITH THE HEARING BEFORE JUDGE BOYLE AS QUICKLY AS  
23 POSSIBLE. HE OBJECTS TO ANY CONTINUANCE BY EITHER PARTY  
24 BECAUSE HE WANTS TO BE TAKEN TO A HEARING PROMPTLY.

25 HE DOES MENTION, ALTHOUGH WE AGREE WITH THE

1 GOVERNMENT THAT HE HAS NOT -- WE HAVE NOT RECEIVED  
2 DISCOVERY, WE ACTUALLY HAVE RECEIVED DISCOVERY, AND HE  
3 REQUESTS THE COURT TO ALLOW HIM TO WITHDRAW HIS MOTION  
4 FOR CHANGE OF VENUE AND HIS MOTION TO DISMISS SO HE MAY  
5 PROCEED TO HIS HEARING IN A TIMELY MANNER.

6 THE COURT: ALL RIGHT. WELL, I WAS GOING TO  
7 RULE AGAINST HIM ON THE MOTION TO TRANSFER TO ARIZONA  
8 BECAUSE I THINK GIVEN THE POSTURE OF ALL OF THESE CASES  
9 NOW, THERE IS A POLICY INITIATIVE TO KEEP THEM HERE AND  
10 THE FOURTH CIRCUIT IS SO INCLINED.

11 AND I WILL ALLOW HIM TO WITHDRAW HIS MOTIONS  
12 AND I THINK IF YOU WANT TO PROPOUND WHAT YOU BELIEVE TO  
13 BE A REALISTIC SCHEDULE TO GET THIS CASE HEARD, I WILL BE  
14 GLAD TO RULE ON THAT SCHEDULE AND EITHER WORK WITH YOU OR  
15 GIVE YOU AN ORDER THAT BOTH SIDES CAN USE TO FINE TUNE  
16 THE STANDING ORDER AND MOVE THIS CASE FORWARD ON THE  
17 MERITS.

18 MR. BRIGNAC: YES, SIR. THANK YOU, SIR.

19 THE COURT: I DON'T THINK I AM INCLINED TO ADD  
20 TO THE BRONCHEAU COMPLEMENT OF CASES NOW UNTIL I SEE WHAT  
21 THEY DO.

22 YOU HAVEN'T HAD ANY INDICATION THAT THEY ARE  
23 GOING TO HAVE ORAL ARGUMENT? THEY ARE IN THE BRIEFING  
24 SCHEDULE NOW?

25 MR. RENFER: THE GOVERNMENT'S BRIEF IS DUE

1 MONDAY, YOUR HONOR. I AM OBTAINING A DRAFT OF IT THIS  
2 MORNING AND IT WILL BE FILED ON MONDAY. AND SO, NO, WE  
3 DO NOT HAVE A BRIEFING ORDER.

4 THE COURT: AND THEN THE DEFENSE HAS A REPLY  
5 BRIEF?

6 MR. RENFER: YES.

7 THE COURT: AND YOU HAVE A BRIEF.

8 MR. RENFER: YES.

9 THE COURT: REBUTTAL?

10 MR. RENFER: YES.

11 THE COURT: THE CASE WON'T BE READY TO ARGUE  
12 UNTIL THE END OF THE SPRING OR MAYBE OVER THE SUMMER.

13 MR. RENFER: INTO THE SPRING, I WOULD HOPE.

14 MR. BRIGNAC: YOUR HONOR, I BELIEVE -- I MIGHT  
15 BE MISREMEMBERING -- BUT I BELIEVE THEY ACTUALLY SET AN  
16 EXPEDITED ORAL ARGUMENT FOR MARCH.

17 MR. RENFER: THAT'S CORRECT. I AM SORRY.  
18 THEY DID. I HAD FORGOTTEN THAT.

19 THE COURT: REALLY.

20 MR. RENFER: THEY DID SET AN EXPEDITED  
21 HEARING, BUT I DON'T REMEMBER THE DATE.

22 MR. BRIGNAC: I DON'T KNOW IF THE DATE HAS  
23 BEEN SET, BUT AS OF NOW, YOUR HONOR, IT'S THE MARCH TERM.

24 THE COURT: THAT WAS AN ORDER SIGNED BY THE  
25 CLERK OR SIGNED BY THE PANEL?

1                   MR. BRIGNAC: I DO NOT RECALL. I JUST KNOW  
2 THAT THE SCHEDULE CAME DOWN. IT WAS AN EXPEDITED  
3 SCHEDULE. THERE WAS AN UNDERSTANDING THAT THERE WOULD BE  
4 NO CONTINUANCES, AND THE ORAL ARGUMENT IS SET FOR MARCH.

5                   MR. RENFER: I AM SORRY. I HAD FORGOTTEN.  
6 THAT IS EXACTLY CORRECT, YOUR HONOR.

7                   THE COURT: INTERESTING. SO THEY ARE GOING TO  
8 ARGUE IT?

9                   MR. RENFER: YES. THEY ARE GOING TO ARGUE IT.

10                  THE COURT: OKAY. I AM SURPRISED, AFTER THE  
11 CONCLUSIVENESS OF COMSTOCK 2.

12                  MR. RENFER: DIFFERENT -- COMPLETELY DIFFERENT  
13 ISSUES THOUGH, YOUR HONOR, SO I WOULD EXPECT THAT THEY  
14 WOULD WANT ARGUMENT ON IT.

15                  THE COURT: OKAY. I THOUGHT THEY WERE CLOSING  
16 THE DOOR PERMANENTLY WITH COMSTOCK 2. THEY JUST SORT OF  
17 BRUSHED TIMMS ASIDE AND SAID, WELL, HERE IS THE REAL  
18 CASE.

19                  MR. RENFER: BUT BRONCHEAU HAS BEEN, AS IN  
20 YOUR ORDER, IT'S A STATUTORY CONSTRUCTION NOT REALLY  
21 DEALING WITH COMSTOCK OR TIMMS. IT'S AN ARGUMENT BY  
22 ITSELF, YOUR HONOR.

23                  THE COURT: WELL, DIDN'T THEY HOLD THE STATUTE  
24 IN THE SECOND COMSTOCK TO BE CONSTITUTIONAL?

25                  MR. RENFER: YES, SIR.

1                   THE COURT: THEY DID NOT -- THEY HAVE NOW  
2 PASSED WHAT THE SUPREME COURT LEFT OPEN.

3                   MR. RENFER: YES.

4                   THE COURT: ON THE BASIC CONSTITUTIONALITY ON  
5 DUE PROCESS.

6                   MR. RENFER: YES, THEY HAVE. AND IF YOU ARE  
7 SAYING --

8                   THE COURT: AND IT SEEMS LIKE BRONCHEAU WOULD  
9 BE REDUNDANT.

10                  MR. RENFER: I THINK IT'S A SUBSET BECAUSE  
11 BRONCHEAU REALLY DOES NOT DEAL WITH THE DUE PROCESS  
12 ARGUMENTS. IT'S STATUTORY CONSTRUCTION WHETHER OR NOT 48  
13 IS THE MECHANISM IN THESE TYPES OF CASES WHERE SUPERVISED  
14 RELEASE IS AVAILABLE.

15                  THE COURT: THE ONLY MECHANISM. THEY COULD  
16 AFFIRM BRONCHEAU AND SAY THEN IN LIGHT OF COMSTOCK, THE  
17 GOVERNMENT CAN CERTIFY PEOPLE AS IT'S DOING OR THEY COULD  
18 ELECT NOT TO DO THAT AND TO DO A 4241, WHICH YOU WON'T  
19 DO, BUT THEY COULD SAY THAT THESE REALLY AREN'T AT ODDS  
20 WITH EACH OTHER. ONE IS PROBABLY -- THE BRONCHEAU  
21 WORKOUT IS PROBABLY NEVER GOING TO HAPPEN, BUT IT DOESN'T  
22 MEAN IT COULDN'T HAPPEN.

23                  MR. RENFER: I DON'T CONSTRUE BRONCHEAU IN  
24 THAT WAY, YOUR HONOR. I SEE THIS COURT'S OPINION IN  
25 BRONCHEAU TO SAY THAT THESE CASES WITH SUPERVISED RELEASE

1 UNDER STATUTORY CONSTRUCTION MUST BE BROUGHT UNDER 4241.  
2 THAT IS THE WAY I AM READING.

3 THE COURT: I THINK THAT IS A FAIR READING.  
4 THE PROBLEM THAT WAS DEALT WITH IN BRONCHEAU WAS WHAT DO  
5 YOU DO WITH THE SUPERVISED RELEASE, AND HOW DO YOU  
6 AVOID --

7 MR. RENFER: EXACTLY.

8 THE COURT: -- THE ESSENTIAL QUALITY OF A  
9 FINAL JUDGMENT.

10 MR. RENFER: THAT IS THE WAY I SEE YOUR  
11 HONOR'S OPINION AS WELL, AND I DON'T SEE THAT COMSTOCK  
12 FORECLOSSES THAT ARGUMENT.

13 AS YOU UNDERSTAND, I DON'T AGREE WITH THE  
14 POSITION, BUT I DON'T THINK IT FORECLOSSES THAT ARGUMENT.

15 THE COURT: RIGHT. WELL, I THINK THAT YOU  
16 HAVE YOUR MARCHING ORDERS IN THIS CASE, AND YOU CAN  
17 PROCEED ACCORDINGLY.

18 MR. BRIGNAC: THANK YOU, YOUR HONOR.

19 THE COURT: OKAY. THANK YOU.

20 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)

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4                   CERTIFICATE  
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7                   THIS IS TO CERTIFY THAT THE FOREGOING  
8                   TRANSCRIPT OF PROCEEDINGS TAKEN IN THE UNITED STATES  
9                   DISTRICT COURT IS A TRUE AND ACCURATE TRANSCRIPTION OF  
10                  THE SHORTHAND NOTES, CONSISTING OF THE WHOLE THEREOF, OF  
11                  THE PROCEEDINGS TAKEN BY ME IN MACHINE SHORTHAND AND  
12                  TRANSCRIBED BY COMPUTER UNDER MY SUPERVISION.

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14                  DATED THIS 29TH DAY OF AUGUST, 2011.  
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14                  /S/ SHARON K. KROEGER  
15                  COURT REPORTER  
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